

HONORABLE RONALD B. LEIGHTON

UNITED STATES DISTRICT COURT
WESTERN DISTRICT OF WASHINGTON
AT TACOMA

COOPER CARRY, INC.,

Plaintiff,

v.

OUTSIDE THE BIG BOX LLC, UPTOWN
CENTER DEVELOPMENT LLC, and
AARON LICHTMAN,

Defendants.

Case No. C08-5630 RBL

ORDER DENYING DEFENDANT
LICHTMAN'S MOTION TO DISMISS
FOR LACK OF JURISDICTION AND
FOR CHANGE OF VENUE

THIS MATTER comes before the Court on Defendant Lichtman's Motion to Dismiss for Lack of Jurisdiction and for Change of Venue [Dkt. #17]. The Court has reviewed the materials submitted in support of, and in opposition to, the motion. Oral argument is not necessary for the Court to resolve the issues presented. For the following reasons, Defendant's motion is DENIED.

BACKGROUND

Plaintiff Cooper Carry is a company with its principal place of business in Georgia. Cooper Carry has additional offices in Virginia, New York, and California. Defendant Aaron Lichtman is an individual residing in New York. Defendants Outside the Big Box ("OTBB") and Uptown Development ("UPTown") (together, the "Companies") only have offices in New York. The underlying facts presented by Cooper Carry are taken as true for the purposes of this order.

1 Lichtman is the owner of UPTown and OTBB. In 2006, UPTown, working in conjunction with
2 developer OTBB, was hired by the City of University Place, Washington ("City") to develop a \$250
3 million Town Center. The Companies paid the City approximately \$569,000 for the exclusive right to
4 negotiate a Disposition and Development Agreement ("DDA") with the City. The DDA bound the
5 Companies to resolve disputes with the City in Washington and the Companies kept registered agents in
6 Washington.

7 In late 2006, Cooper Carry entered into a Base Contract with the Companies. The Base Contract
8 bound Cooper Carry to perform "master plan concept design services" for the Town Center; schematic
9 design services were not included. In furtherance of the Base Contract, Cooper Carry's representatives
10 attended meetings in Washington with City Representatives and Lichtman. Cooper Carry performed the
11 work called for by the Base Contract and the Companies paid in-full.

12 In July 2007, the Companies and Cooper Carry negotiated a second phase (Phase II) of work under
13 which Cooper Carry provided schematic design and construction document services. Compensation for
14 these additional services was not contingent on any condition precedent other than performance of the
15 work. The Companies verbally requested that Cooper Carry provide these services for Phase II and
16 Cooper Carry subsequently did so.

17 In January 2008, the City and the Companies executed a Termination Agreement. The City paid
18 the Companies \$1.75 million in exchange for ownership of all the Companies' work plans, specifications,
19 and intellectual property related to the Town Center. This included work product contributed by entities
20 contracting with the Companies. The Termination Agreement designated Washington as the appropriate
21 venue for any disputes.

22 Lichtman was not a mere distant owner of the Companies; he was personally involved in many of
23 the above-cited events. In the middle of 2006, he was conducting business in Washington in an attempt to
24 land the Town Center contract. At the end of 2006, he acted on behalf of the Companies in negotiating the
25 Base Contract with Cooper Carry. On several occasions in January 2007, he met with a Cooper Carry
26 representative in Washington to discuss the Town Center project. In June 2007, he again met with a
27 Cooper Carry representative in Washington, this time to review concept designs and prepare for Phase II.
28 Beginning in July 2007, Lichtman, on behalf of the Companies, negotiated an agreement with Cooper

1 Carry for Phase II. Those negotiations occurred in various locations, but never in Washington. For
2 instance, Lichtman went to Colorado on behalf of the Companies in October 2007 to meet with Cooper
3 Carry and City representatives concerning the Town Center and Phase II.

4 ANALYSIS

5 **A. Personal Jurisdiction**

6 The test for personal jurisdiction is two-fold: Washington's long-arm statute must confer personal
7 jurisdiction over the Defendant and the exercise of that jurisdiction must comport with due process
8 considerations. *Rio Props., Inc., v. Rio Int'l Interlink*, 284 F.3d 1008, 1019 (9th Cir. 2002).
9 Washington's long-arm statute "authorizes courts to exercise jurisdiction over nonresident defendants to
10 the extent permitted by the due process clause of the United States Constitution." *MBM Fisheries, Inc., v.*
11 *Bolinger Mach. Shop and Shipyard, Inc.*, 60 Wn. App. 414, 423 (1991). The Court, therefore, need only
12 determine the limits imposed by the due process clause to establish personal jurisdiction.

13 The Court may have general or specific personal jurisdiction. Specific jurisdiction is determined by
14 a three-part test: (1) the non-resident defendant purposefully directed his activities or consummated some
15 transaction with the forum or a resident thereof, or performed some act by which he purposefully availed
16 himself of the privilege of conducting activities in the forum, thereby invoking benefits and protections of
17 its laws; (2) the claim is one which arises out of or relates to the defendant's forum-related activities, and
18 (3) the exercise of jurisdiction is reasonable. *Panavision Int'l, LP v. Toeppen*, 141 F.3d 1316, 1320 (9th
19 Cir. 1998); *Vernon Johnson Family Ltd. P'ship v. Bank One Texas, N.A.*, 80 F. Supp. 2d 1127, 1133
20 (W.D. Wa. 2000).

21 In its previous Order Denying Motion to Dismiss for Lack of Jurisdiction and Forum Non
22 Conveniens [Dkt. #25], the Court determined that it has specific personal jurisdiction over the Companies.
23 Lichtman was at all relevant times involved in or responsible for the negotiations and activities of the
24 Companies. The Court may properly assert personal jurisdiction over him.

25 **B. Personal Liability**

26 Lichtman's Motion to Dismiss [Dkt. #17] and Reply Declaration [Dkt. #27] put forward a litany of
27 proposed justifications for dismissal. Specifically, Paragraphs 2 and 3 of his Reply assert that Lichtman
28 was not involved in any of the pertinent transactions in his individual capacity. That Lichtman did not

1 participate in his individual capacity is immaterial for the purposes of establishing personal jurisdiction.
2 Paragraphs 4 and 5 claim that Lichtman never had an apartment in Washington as written in the Court's
3 Order Denying Motion to Dismiss [Dkt. #25]. That order, however, made clear that the Court took
4 Plaintiff's allegations as true. Contrary to Lichtman's claim, Cooper Carry did make that assertion. *See*
5 [Dkt. #13] (Opposition to Motion to Dismiss, p. 3). Paragraphs 6, 7, and 8 assert that no alleged
6 negotiations or work were performed in Washington. Again, this is immaterial. The basis of the Court's
7 personal jurisdiction is the relevant activities' intimacy and contacts with an ongoing project and
8 relationship in Washington. Finally, Paragraphs 9 and 10 state that there were insufficient contacts at the
9 time the action was commenced to comply with due process considerations. The Court's Order Denying
10 Motion to Dismiss [Dkt. #25] made it clear that the moment at which sufficient contacts must exist is when
11 the claim arises, not when it is commenced.

12 **C. Venue**

13 The Court has previously determined that venue is proper, and further declined to transfer venue,
14 for Cooper Carry's suit against the Companies. [Dkt. #25] (Order Denying Motion to Dismiss).
15 Lichtman's argument is no more persuasive than the one put forth by the Companies. If anything,
16 Lichtman's argument for transfer is less persuasive. Two companies that he owns are already parties to the
17 lawsuit in Washington, the additional burden on him to appear as an individual is minimal, if it exists at all.

18 **CONCLUSION**

19 For the foregoing reasons, Defendant Lichtman's Motion to Dismiss for Lack of Jurisdiction and
20 for Change of Venue [Dkt. #17] is DENIED.

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23 Dated this 30th day of January, 2009.

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25 
26 RONALD B. LEIGHTON
27 UNITED STATES DISTRICT JUDGE
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